

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:05

PLR-117097-07

Date:

July 26, 2007

## Legend

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

Sub 5 =

Date 1 =

Date 2 =

Year 1 =

Business A =

Accounting Firm =

Date 3 =

Date 4 =

Year 2 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Date 12 =

Date 13 =

Date 14 =

Date 15 =

Date 16 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

Year 8 =

Year 9 =

Date 17 =

Date 18 =

Date 19 =

Dear :

This letter responds to your request for rulings dated April 9, 2007 submitted by your authorized representative, requesting that the Commissioner make a determination, under Treas. Reg. §1.1502-75(b)(2), that Sub 1, Sub 2, Sub 3, Sub 4, and Sub 5 have joined in the making of an initial consolidated return filed by Parent for the year ending Date 2.

### Summary of Facts

Parent is a corporation incorporated in Year 1 that is engaged, through its subsidiaries, in Business A. Until Date 1, Sub 1 was the parent entity of a group of consolidated corporations including Sub 2, Sub 3, Sub 4, and Sub 5. A final consolidated return for this group was timely filed for the tax year ending on Date 1. On Date 1, Sub 1 was acquired by an unrelated party and as part of this transaction, Parent was formed as a holding company for Sub 1 and its four subsidiaries. Sub 1 and its four subsidiaries are hereinafter referred to as the subsidiaries.

Parent and its subsidiaries informed Accounting Firm that they intended to file a consolidated return with Parent as the common parent for the year ended Date 2. On Date 3, Parent timely filed a return for the year ending Date 2 with a consolidated statement of income and a Form 851, Affiliations Schedule, identifying Sub 1, Sub 2, Sub 3, Sub 4, and Sub 5. On Date 4, Accounting Firm noticed that Form 1122 ("Subsidiary Corporation's consent to be included in a Consolidated Return") was inadvertently not filed for any of the subsidiaries with the consolidated return for the year ending Date 2. The statute of limitations under section 6501(a) has expired for tax returns filed for the year ending Date 2.

### Representations

The taxpayer's have made the following representations:

1. The income and deductions of each member (Sub 1, Sub 2, Sub 3, Sub 4, and Sub 5) for the taxable years ended Date 2, and all taxable periods thereafter were included in the consolidated returns filed by Parent as the parent of the consolidated group.
2. None of the subsidiaries filed separate returns for the taxable year ended Date 2 and thereafter.
3. Sub 1, Sub 2, Sub 3, Sub 4, and Sub 5 were each included in Parent's affiliations schedule, Form 851, for the taxable year ended Date 2 and thereafter.

4. Except for the failure to timely file Forms 1122, Parent and its subsidiaries were eligible to file a consolidated U.S. corporation income tax return for the taxable year ended Date 2 and all taxable periods thereafter.
5. As of the date of this request, the Internal Revenue Service has not contacted Parent and its subsidiaries about the failure to timely file Form 1122 with the consolidated U.S. corporation income tax return for the taxable period ended Date 2.

#### Applicable Law

Treas. Reg. §1.1502-75(a)(1) provides, in part, that an affiliated group of corporations which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents, in accordance with Treas. Reg. §1.1502-75(b).

Treas. Reg. §1.1502-75(a)(2) provides that a group which filed (or was required to file) a consolidated return for the immediately preceding taxable year is required to file a consolidated return for the taxable year, unless it has been granted permission by the Commissioner to discontinue filing consolidated returns.

With regard to the consent of a corporation for a group's first consolidated year, Treas. Reg. §1.1502-75(b)(1) provides, as a general rule, that the consent of a corporation shall be made by such corporation joining in the making of the consolidated return for such year and that a corporation shall be deemed to have joined in the making of such return for such year, if it files a Form 1122 in the manner specified in Treas. Reg. §1.1502-75(h)(2).

Treas. Reg. §1.1502-75(h)(2) provides that if, under the provisions of Treas. Reg. §1.1502-75(a)(1), a group wishes to file a consolidated return for a taxable year, a Form 1122 must be executed by each subsidiary. This regulation provides rules for properly executing Forms 1122 and attaching them to a consolidated return, and also provides that a Form 1122 shall not be required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding taxable year.

Treas. Reg. §1.1502-75(b)(2) of the regulations provides that if a member of the group fails to file the Form 1122, the Commissioner may under the facts and circumstances determine that such member has nevertheless joined in the making of a consolidated return by such group. Factors, among others, that the Commissioner will take into account in making this determination include the following: (i) Whether or not the income and deductions of each member for such taxable year were included in the consolidated return; (ii) Whether or not a separate return was filed by any member for

that taxable year; and (iii) Whether or not the member of the group was included in the affiliations schedule, Form 851, for such taxable year.

Where the Commissioner under the facts and circumstances determines that the member has joined in the making of a consolidated return, such member will be treated for purposes of Treas. Reg. §1.1502-75(h)(2) as if it had filed a Form 1122 for such year.

### Ruling

Based solely on the information submitted and the representations made, this office rules that, pursuant to Treasury Regulation §1.1502-75(b)(2), Sub 1, Sub 2, Sub 3, Sub 4, and Sub 5 are treated under Treasury Regulation §1.1502-75(h)(2) as if they had filed Forms 1122 with the consolidated return of the Parent consolidated group for the taxable year ended Date 2.

### Caveats

We express no opinion about the tax treatment of the facts described above under other provisions of the Code or regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, these facts that are not specifically covered by the above ruling.

The ruling contained in this letter is based on information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the taxpayer's ruling request. Verification of this material may be required as part of the audit process.

### Procedural Statements

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

*Debra Carlisle*

Debra Carlisle  
Chief, Branch 5  
Office of Associate Chief Counsel  
(Corporate)